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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,938	12/11/2000	Gerald Kraeutler	P00,1892	3439

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EXAMINER

DUONG, THOMAS

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/734,938

Applicant(s)

KRAEUTLER ET AL.

Examiner

Thomas Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on July 12, 2004. The amendment filed on July 12, 2004 has been entered and made of record. *Claims 1-15* are presented for further consideration and examination.

Response to Argument

2. The Applicants' arguments and amendments filed on July 12, 2004 have been fully considered, but they are not persuasive.
3. With regard to claim 1, the Applicants point out that:
 - *Claim 1 has been amended to include the limitation that the connection establishment and transmission of the operating system data occurs utilizing only call signaling methods of the telecommunication terminal device. Support for this amendment can be found in the Specification at paragraphs (0019) and (0020).*
 - *The prior art references do not disclose the usage of the call signaling methods for updating a telecommunication terminal device. Therefore the invention is new.*However, the Examiner finds that the Applicants' arguments are not persuasive and maintains that the Malik and Sun references do disclose,
 - *administering operating system data for an operating system running in the telecommunication terminal device, in a data management system remote from said telecommunication terminal device; (Lerche, col.1, lines 41-51; col.2, lines 18-25; fig.1)*

- *establishing a connection for transmitting data utilizing only call signaling methods of the telecommunication terminal device, including said operating system data, between the telecommunication terminal device and the data management system* (Lerche, col.1, lines 41-51; col.7, lines 30-41; col.10, lines 8-20; fig.1; module 106 on fig.6A)
- *transmitting the operating system data utilizing only call signaling methods of the telecommunication terminal device from said data management system to a memory area of the operating system running in said telecommunication terminal device;* (Lerche, col.1, lines 41-51; col.7, lines 46-53; col.10, lines 8-20; fig.1; module 108 on fig.6A)
- *checking the correctness of the data transmitted in the telecommunication terminal device; and* (Sun, col.13, line 59 - col.14, line12)
- *in the case of an error:*
 - *aborting the connection;* (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; module 116 on fig.6A)
 - *establishing another connection between the telecommunication terminal device and the data management system; and* (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)
 - *repeating transmission of said operating system data from said data management system to said terminal device.* (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)

Lerche and Sun references disclose a method that prevents a failure in remotely upgrading software in a network device. The remote upgrading of software stored within a memory associated with the networked device may be problematic in that,

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should the upgrade installation fail for some reason, the networked device may be rendered totally inoperative. The restoration of functionality to the network device may, in such cases, be expensive and inconvenient especially if service personnel are required to dispatch to the site of the networked device to address and correct the failed software upgrade operation. Furthermore, Lerche anticipates an embodiment of the invention that *"may be propagated to a target machine via a communication link and be encoded within a suitable carrier-wave signal"* (col.10, lines 18-20). Therefore, the Applicants still failed to clearly disclose the novelty of the invention and identify specific limitation, which would define patentable distinction over prior art.

4. With regard to claims 2-15, they are rejected at least by virtual of their dependency on the independent claims and by other reasons set forth in the previous office action. Accordingly, rejections for *claims 2-15* are presented as below:

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerche (US006457175B1) and in view of Sun et al. (US005901330A).
7. With regard to claims 1-5 and 11-12, Lerche reference discloses,
- *administering operating system data (software upgrade) for an operating system running in the telecommunication terminal device (machine, modem 16), in a data management system (ISP 26, software supplier 36) remote from said*

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telecommunication terminal device; (Lerche, col.1, lines 41-51; col.2, lines 18-25; fig.1)

- *establishing a connection for transmitting data utilizing only call signaling methods of the telecommunication terminal device, including said operating system data, between the telecommunication terminal device and the data management system (Lerche, col.1, lines 41-51; col.7, lines 30-41; col.10, lines 8-20; fig.1; module 106 on fig.6A)*
- *transmitting the operating system data utilizing only call signaling methods of the telecommunication terminal device from said data management system to a memory area of the operating system running in said telecommunication terminal device; (Lerche, col.1, lines 41-51; col.7, lines 46-53; col.10, lines 8-20; fig.1; module 108 on fig.6A)*
- *in the case of an error:*
 - *aborting the connection; (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; module 116 on fig.6A)*
 - *establishing another connection between the telecommunication terminal device and the data management system; and (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)*
 - *repeating transmission of said operating system data from said data management system to said terminal device. (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)*

However, Lerche reference does not explicitly disclose,

- *checking the correctness of the data transmitted in the telecommunication terminal device;*

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Sun teaches,

- *checking the correctness of the data transmitted in the telecommunication terminal device; (Sun, col.13, line 59 - col.14, line12)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Sun reference with Lerche reference to enhance the network by preventing a failure in remotely upgrading software in a network device. The remote upgrading of software stored within a memory associated with the networked device may be problematic in that, should the upgrade installation fail for some reason, the networked device may be rendered totally inoperative. The restoration of functionality to the network device may, in such cases, be expensive and inconvenient especially if service personnel are required to dispatch to the site of the networked device to address and correct the failed software upgrade operation.

8. With regard to claims 6 and 13-14, Lerche and Sun references disclose the invention substantially as claimed,

See *claim 1* rejection as detailed above.

Furthermore, Lerche reference discloses,

- *further comprising the step of modifying the operating system running in the telecommunication terminal device. (Lerche, col.1, lines 41-51; col.3, lines 3-14; fig.1; fig.6A)*
- *wherein the step of modifying further comprises activating the modified operating system given the correctness of the data transmission (Lerche, col.1, lines 41-51; col.3, lines 36-54; fig.1; fig.6B)*

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9. With regard to claims 7-8, Lerche and Sun references disclose the invention substantially as claimed,

See *claim 1* rejection as detailed above.

Furthermore, Lerche reference discloses,

- *further comprising the step of storing at least a part of the operating system data in the memory area of the operating system. (Lerche, col.1, lines 41-51; col.7, lines 46-53; fig.1; module 108 on fig.6A)*
- *wherein the step of storing comprises ensuring that the operating system is not overwritten by the transmitted operating system data. (Lerche, col.1, lines 41-51; col.7, lines 46-53; fig.1; module 108 on fig.6A)*

10. With regard to claims 9-10, Lerche and Sun references disclose the invention substantially as claimed,

See *claim 1* rejection as detailed above.

Furthermore, Sun reference discloses,

- *further comprising the step of accepting in the data management system an answerback from the telecommunication terminal device regarding the correctness of the data transmission. (Sun, col.13, line 59 - col.14, line12)*
- *wherein the step of checking further comprises accepting in the data management center an answerback from the telecommunication terminal device regarding the correctness of the data transmission and repeating the data transmission after a predetermined time upon the occurrence of an error in the data transmission. (Sun, col.13, line 59 - col.14, line12)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Sun reference with Lerche reference to enhance the network by preventing a failure in remotely upgrading software in a network device. The remote upgrading of software stored within a memory associated with the networked device may be problematic in that, should the upgrade installation fail for some reason, the networked device may be rendered totally inoperative. The restoration of functionality to the network device may, in such cases, be expensive and inconvenient especially if service personnel are required to dispatch to the site of the networked device to address and correct the failed software upgrade operation.

11. Claim 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerche (US006457175B1) and in view of Sun et al. (US005901330A).
12. With regard to claim 15, Lerche reference discloses,
 - *administering operating system data (software upgrade) for an operating system running in the telecommunication terminal device (machine, modem 16), in a data management system (ISP 26, software supplier 36) remote from said telecommunication terminal device; (Lerche, col.1, lines 41-51; col.2, lines 18-25; col.6, lines 35-60; fig.1)*
 - *establishing a connection for transmitting data utilizing only call signaling methods of the telecommunication terminal device, including said operating system data, between the telecommunication terminal device and the data management system by copying a connection program part to a first memory area of the telecommunication terminal device and beginning execution of the connection program part from the first memory area; (Lerche, col.1, lines 41-51;*

col.6, lines 35-60; col.7, lines 30-41; col.10, lines 8-20; fig.1; module 106 on fig.6A)

- *transmitting the operating system data utilizing only call signaling methods of the telecommunication terminal device from said data management system to a memory area of the operating system running in said telecommunication terminal device, the operating system data being copied by the telecommunication terminal device in one or more program pads according to the following steps:*
 - *copying a first or only program part into a reserved memory area;*
 - *copying additional program parts, if present, into a second through nth memory area, where n corresponds to a total number of program parts; and*
 - *copying the first or only program part from the reserved memory area into the first memory area; (Lerche, col.1, lines 41-51; col.7, lines 46-53; col.10, lines 8-20; fig.1; module 108 on fig.6A)*
- *in the case of an error:*
 - *aborting the connection in case of error; (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; module 116 on fig.6A)*
 - *establishing another connection between the telecommunication terminal device and the data management system; and (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)*
 - *repeating transmission of said operating system data from said data management system to said terminal device. (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)*

However, Lerche reference does not explicitly disclose,

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- *checking the correctness of the data transmitted in the telecommunication terminal device;*

Sun teaches,

- *checking the correctness of the data transmitted in the telecommunication terminal device; (Sun, col.13, line 59 - col.14, line12)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Sun reference with Lerche reference to enhance the network by preventing a failure in remotely upgrading software in a network device. The remote upgrading of software stored within a memory associated with the networked device may be problematic in that, should the upgrade installation fail for some reason, the networked device may be rendered totally inoperative. The restoration of functionality to the network device may, in such cases, be expensive and inconvenient especially if service personnel are required to dispatch to the site of the networked device to address and correct the failed software upgrade operation.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 571/272-3911. The examiner can normally be reached on M-F 7:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 571/272-3923. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9306 for regular communications and 703/872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-3900.

Thomas Duong (AU2143)

November 19, 2004


JACK B. HARVEY
SUPERVISORY PATENT EXAMINER